IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4668 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO @

SHETH ENTERPRISES PVT LTD.

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioners.

MR DN PATEL, Senior Standing Counsel for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 18/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Standing Counsel for the Central Government waives service of Rule for the respondents. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. By this petition under Article 226 of the Constitution, the petitioners have prayed for directions against the respondents which are really in the nature of prayer for enforcement of the order of the Customs, Excise & Gold (Control) Tribunal, Kolkata, in Appeal Nos. CRV 86 and 87 of 2001.

3. The petitioner, M/s. Sheth Enterprises Pvt.Ltd., imported a consignment of 7571 meters of polyester fabrics from a Japan company vide Bill of Entry dated 25.9.1995. The goods were imported under advance licence dated 13.1.1995 issued in favour of M/s. Megha Apparels Inc.,and transferred in the petitioners' name. The total CIF value declared by the importers for the goods was US $ 7571 at the rate of US $ 1.00 per meter CIF.

4. According to the respondent authorities, the goods were undervalued compared to the similar goods imported by some other parties. A show cause notice was issued alleging violation of the conditions of the licence, particularly conditions No. 6 and 4. After giving the petitioners an opportunity of hearing the Commissioner of Customs passed an order dated 21st November 2000 denying the petitioners the benefit of advance licence dated 13th January 1995 and enhancing the value of the goods to US $ 4.00 per meter CIF under the provisions of Rule 8 of the Customs Valuation Rules, 1988 read with Sec. 14 of the Customs Act, 1962. The Commissioner also passed an order of confiscating the goods measuring 7571 meters of misdeclared polyester fabrics which was seized. The Commissioner however gave petitioners an opportunity to pay redemption fine of Rs. 2,50,000/= for release of the goods in liew of confiscation. The penalty of Rs. 7,00,000/- was also imposed on the petitioner and on its Director.

5. The petitioners carried the matter in appeal before the CEGAT. By judgment and order dated 14th September 2001 the CEGAT, Kolkata allowed the appeal in the following terms:

"In view of the above analysis,

> therefore, there is no case made out against the appellants either for violation of the conditions of the import licence or for undervaluation of the goods. Since on merits, the appeals are liable to be admitted, the question of imposition of penalty either on M/s. Sheth Enterprises Pvt.Ltd. or Shri Chandrakant Sheth, Director would not arise. The appeals are thus allowed by setting aside the order passed by the Commissioner. "

The grievance in the present petition is that inspite of the aforesaid order of the CEGAT the respondents are not releasing the goods.

6. Mr. D.N. Patel, learned Senior Standing Counsel for the Union of India states that the petitioners are required to observe the necessary formalities for clearance. Mr. Patel is, however, not in a position to state that the respondent authorities have challenged the aforesaid order of the CEGAT before any Court.

7. Heard the learned counsel for the parties. It appears to the Court that when CEGAT had already rendered the decision in favour of the petitioners on 14th September, 2001 as per Annexure 'C', and a period of more than 9 months had also elapsed then there is no reason why the respondents should not be directed to comply with the said order of the CEGAT.

8. In view of the above, this petition is allowed. The respondents are directed to comply with the judgment and order dated 14th September 2001 of the CEGAT, Kolkata, in Appeal No. CRV-86 & 87/2001 as expeditiously as possible, and in any case within one month from the date of receipt of writ of this Court or the certified copy of judgment, whichever is earlier, subject to the petitioners complying with the formalities, if any, under the law.

9. Rule is accordingly made absolute with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]